South Mountain Healthcare and Rehabilitation Center *and* District 6, International Union of Industrial, Service, Transport, and Health Employees and Paper, Allied-Industrial Chemical & Energy Workers International Union, Local 1-300, AFL–CIO, CLC. Case 22–RC–12461

March 18, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On April 22, 2004, the Regional Director for Region 22 issued a Decision and Order finding that the Memorandum of Agreement (MOA) executed by Paper, Allied-Industrial Chemical & Energy Workers International Union, Local 1-300, AFL–CIO–CLC (Intervenor) and the Employer constituted a bar to the election petition. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, District 6, International Union of Industrial, Service, Transport, and Health Employees (Petitioner) filed a timely request for review of the Regional Director's decision, contending that the MOA did not serve as a bar to the petition because the agreement did not provide for an effective date.

On September 22, 2004, the Board issued an Order remanding the case to the Regional Director to analyze whether the MOA contained a clear and unambiguous effective date. On October 19, 2004, the Regional Director issued a Supplemental Decision and Order finding the agreement's effective date to be March 5, 2004. He again dismissed the petition. Thereafter, the Petitioner filed a timely request for review of the Regional Director's supplemental decision. The Employer filed an opposition.

Having carefully considered the matter and the entire record, we grant review, reverse the Regional Director, and reinstate the petition.

The Employer operates a nursing home in Vauxhall, New Jersey. The Employer and Amalgamated Local 747 Health Care Employees Union (Local 747) were parties to successor collective-bargaining agreements effective from July 1, 1997 to June 30, 2001 and July 1, 2000 to June 30, 2004. On May 25, 2000, Local 747 and other affiliated locals merged with the Intervenor, and the Intervenor became the successor labor organization to Local 747. Prior to the merger, Local 747 and the Employer had entered into a contract for the period July 1, 2000 to June 30, 2004. The Employer recognized the Intervenor and continued to apply the terms of the 2000–2004 contracts to its employees.

In late 2003, the Intervenor and the Employer began negotiations for a new contract, and the Employer submitted its final offer in February 2004.[1] The Intervenor's members ratified the Employer's final offer on March 5, and that day the Intervenor prepared the MOA at issue. The Intervenor signed the agreement on March 5, and the Employer signed it on March 9. The Petitioner filed its petition on March 18, seeking to represent service and maintenance employees.[2]

The MOA is a 3-page document and is dated "March 5, 2004" on the upper left-hand corner of its cover page. Its stated duration is "[f]our (4) year[s]." The MOA further states that "[a]ll terms of the agreement remain the same, except as modified below for a successor agreement." The modified terms relate to health and life insurance contributions, pension contributions, longevity benefits, options for employees who elect not to receive benefits, starting wage rates for unit employees, and wage increases that are effective beginning on July 1, and awarded yearly on January 1 and July 1 through January 1, 2008. There is no language in the agreement stating its effective date or its expiration date.

To serve as a bar to a petition, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979) (citing *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958)). Both an effective date and an expiration date are material terms of a contract. Id. Unless these dates are apparent from the face of the contract, without resort to parol evidence, the contract will not serve as a bar. Id. The terms of the agreement must be clear from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. *Cooper Tire & Rubber Co.*, 181 NLRB 509, (1970).

Here, we agree with the Petitioner that the actual effective date of the MOA cannot be determined from the four corners of the document. While the agreement's stated duration is 4 years, it is not readily apparent from which date the 4 years begins to run. Rather, there are at least

[1] All dates are in 2004, unless otherwise noted.

[2] The petitioned-for unit is the same unit of employees covered by the MOA between the Employer and the Intervenor:

> All full-time and part-time nurses aides, dietary staff, housekeeping and laundry employees, excluding all office clerical employees, skilled maintenance employees, licensed practical nurses, registered nurses, professional employees, watchmen, guards and supervisors as defined by the Act.

four possible effective dates of the MOA: March 5 (the date the Intervenor signed the MOA); March 9 (the date the Employer signed the MOA); April 1 (the effective date of "Health and Life Insurance" contributions and "Pension 401k" contributions); and July 1 (the date of the first wage increase and, coincidentally, the day after the expiration of the prior contract). Further, the contract does not specify an expiration date, which could help identify the contract's effective date. Given the conflict among the various effective dates, we find that the MOA does not serve as a bar to the petition because third-parties cannot discern the appropriate time for filing a representation petition.[3]

In light of the foregoing, we find that the contract does not set forth an ascertainable effective date or expiration date sufficient to impart stability to the bargaining relationship. Accordingly, we reverse the Regional Director, reinstate the petition, and remand to the Regional Director for further appropriate action.

ORDER

IT IS ORDERED that the petition be reinstated, and that this matter be remanded to the Regional Director for further appropriate action.

Dated, Washington, D.C. March 18, 2005

Robert J. Battista, Chairman

Wilma B. Lineman, Member

Peter C. Schaumber, Member

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[3] The Regional Director erred in relying on testimony adduced at the hearing to find that the Employer and Intervenor intended March 5, to be the MOA's effective date. It is well established that the effective and/or expiration date(s) should be apparent from the face of the contract, without resorting to extrinsic evidence. *Jet-Pak Corp.*, 231 NLRB 552, 552–553 (1977) (in determining whether a contract serves as a bar to an election, we are permitted only to examine the terms of the contract as they appear within the four corners of the instrument itself). By relying on oral testimony, the Regional Director improperly utilized extrinsic evidence to reach his ultimate finding.